

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 990 of 2012

1. Karan Singh, S/o. Lallu Prasad Bagri, aged about 32 years, Occupation – Driver.
2. Ramjas Bagri, S/o. Shyam Lal Bagri, aged about 27 years, Occupation – Driver.

Both R/o. Village- Damaha, Police Station – Nagaod, District – Satna (M.P.)

---- Appellants

Versus

State of Chhattisgarh, Through : District Magistrate, District – Jagdalpur (C.G.)

-----Respondent

AND

CR.A. No. 1121 of 2012

Santosh Raidas, S/o. Ramlal Raidas, aged about 28 years, R/o. Village & Post Semriya, P.S. -Sitapur, District – Chitrakut (U.P.).

---- Appellant

Versus

State of Chhattisgarh, Through : District Magistrate, Jagdalpur, District – Bastar (C.G.)

-----Respondent

For Appellants	: Mr. Arun Kochar, Advocate and Mr. Keshav Dewangan, Advocate
For Respondent/State	: Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/04/2018

1. Both the appeals are heard and decided together by this common order as they are arising out of the same incident and the judgment of conviction and order of sentence.

2. These appeals have been preferred against the judgment of conviction and order of sentence, passed by the Special Judge (N.D.P.S. Act), Jagdalpur, District – Bastar in Special Case No.03/2009 on 06.10.2012 convicting the appellants for the offence under Section 20 (b) (2-C) of N.D.P.S. Act and sentenced them to under go R.I. for 10 years along with fine of Rs.1,00,000/- to each of the appellants and in default of payment of fine, the appellants are required to further under go R.I. for 1 year separately.
3. Facts of the case in brief is this that on 17.02.2009, the vehicle bearing registration No. M.P.-19-BB-0299 was chased and stopped by the police personnel of Police Station – Keshkal. All the appellants were occupying the said vehicle. A search was made according to the provisions of N.D.P.S. Act and 200 Kg. of Ganja, the narcotics substance was found in their possession, which was being transported by them. Seizure of Ganja was made. After completing the procedure on the spot about sampling, weighing and packaging, panchnama of each and every procedure was prepared on the spot. A.S.I., C.L. Dhruw, who conducted the procedure of search and seizure and lodged FIR (Ex. P-26) at Police Station – Keshkal registering the offence against the appellants. The samples were sent for FSL examination and the report received, confirmed that the seized articles was narcotics substance, Ganja. Charge-sheet was filed after completion of investigation.
4. Appellants were charged with offence under Section 20 (b) (2-C) of N.D.P.S. Act, 1985. The appellants denied the charges and prayed

for trial. The prosecution examined as many as 8 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stands convicted and sentenced as mentioned aforesaid.

5. It is submitted by the learned counsels appearing on behalf of the respective appellants that the trial Court has passed erroneous judgment of conviction based on the unbelievable evidence of the prosecution. The trial Court has overlooked the provisions of Section 42 and 50 of the N.D.P.S. Act, that was not complied with by the investigation agency. All the independent witnesses have turned hostile, even then believing the statement of only the police witnesses, judgment of conviction has been passed. Hence, prayed that the impugned judgment be interfered with. In the alternative, counsel for the appellants submits that, if this Court is not inclined to allow this appeal, in that case, the order of sentence may be modified according to which, in case of non-payment of fine amount has been ordered to be executed separately, which may be ordered to run concurrently.
6. Counsel for the State opposes the grounds in these appeals and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts and there is no scope for intervention in the impugned judgment of conviction and order of sentence. Hence, both the appeals be

dismissed.

7. I have heard the learned counsel for the parties and perused the record of the Court below.
8. Sub -Inspector, C.L. Dhruwa (P.W.-6) has stated, that on the date of incident, he along with other staff were present on the forest check post, when he saw a vehicle bearing registration No. M.P.-19-BB-0299 coming towards them, which turned back and speeded away. That vehicle was chased and stopped. It was found that the appellants were occupying the vehicle. On search made, it was found that they are carrying Ganja. As per the procedure provided under the NDPS Act, information was dispatched to the superior officers and notice under Section 50 of N.D.P.S. Act vide Ex.P-6 was served upon the appellants jointly on which, the appellants gave written consent that they want to be searched by the witness himself present on the spot. After search of the witnesses and the other staff present, the vehicle was searched, in which 18 numbers of gunny bags and plastic bags were found, in which the narcotics substance, Ganja was contained. A test procedure was carried out on the spot vide Ex.P-8, P-9 and Ex.P-10 and it was found that substance found in search was Ganja. Panchnama vide Ex.P/11 was also prepared in the spot. Scale and weights were arranged immediately. After verifying the scale according the document Ex.P-12, all the recovered Ganja was weighted in that scale vide panchnama Ex.P-13. Subsequent to that 82 Kg. of Ganja was seized from the possession of the appellant- Santosh Raidas vide

Ex.P-16. 70 Kg. of Ganja was seized from the appellant - Karan Singh vide Ex.P-18 and 48 Kg of Ganja was seized from the appellant – Ramjas Bagri vide Ex.P-17. The vehicle and the papers were also seized from the appellant – Ramjas Bagri vide Ex.P-17. The samples of all the contraband was prepared after making homogeneous mixture of all the gunny bags. The procedure of preparing homogeneous mixture and sample packets was carried out vide Ex.P-19, P-20 and Ex.P-21.

9. This witness also prepared a spot map vide Ex.P-32 and recorded a entry in station house diary vide Ex.P-33. Thereafter on the information given by him, FIR (Ex.P-26) was lodged in Police Station-Keshkal. Information about the whole procedure was immediately dispatched to the superior police officer vide Ex.P-36. This witnesses has further stated that 18 packets of samples were immediately dispatched to the FSL Raipur, which were received in the FSL laboratory, Raipur. The statement given by this witness in examination in chief has remained intact in his cross-examination.
10. The statement of C.L. Dhruw (P.W.-6) has been supported by the Constable – Ravindra Bharti (P.W.-1), Head Constable -Ajay Kumar Tekam (P.W.-2), B. Prasad (P.W.-5), Head Constable -Santosh Markam (P.W.-7) and Constable -Surendra Das Manikpuri (P.W.-8). The independent witness Lekhraj Nanwani (P.W.-3) has also partly supported the statement given by the investigating officer and stated that when he arrived on the spot, he saw the appellants standing there and he also saw that police men were weighing the

Ganja that were contained in 18 gunny bags. He has although admitted his signature in the various panchnama papers on the spot, but later on he could not memorize each and every procedure conducted in his presence, for that he was declared hostile. But the statement given by him to some extent is in support of the investigation officer, which is corroborative piece of evidence.

11. After close scrutiny of evidence of all the prosecution witnesses, I am of this considered view that the finding recorded by the trial Court against these appellants, holding them guilty for the offence under Section 20 (b) (2-C) has support of the prosecution evidence beyond all reasonable doubt, hence, there is no room for any interference in the impugned judgment on the point of conviction of the appellants.
12. Considered on the alternative prayer made by the counsel for the appellants in both the cases. The trial Court has ordered in the impugned judgment that imprisonment to be under gone in default of payment of fine has to be under gone separately from the other sentence of imprisonment as ordered.
13. Considering the submissions made, the appellants are in jail since 17.02.2009, and the substantive sentence of imprisonment imposed upon them is minimum sentence, which can be sentenced under the provisions of Section 20 (b) (2-C) of N.D.P.S. Act. The sentence of fine imposed upon the appellants needs interference according to the circumstances that are there in the present in this case. Hence, this appeal is allowed in part. The conviction of the appellants as

ordered by the trial Court is upheld. Similarly the sentence of rigorous imprisonment of 10 years as awarded by the trial Court is also upheld. Sentence of fine imposed by the trial Court is hereby modified and instead of the fine as imposed by the trial Court, the appellants in both the cases shall be required to pay a fine of Rs.10,000/- each and in default of payment of such fine, they shall be required to further under go rigorous imprisonment of two months.

14. Accordingly, both the appeals are disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge